

ESTTA Tracking number: **ESTTA1210958**

Filing date: **05/23/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92070823
Party	Plaintiff ICware Systems, Inc. dba BatchTest Corporation and BatchTest Corporation
Correspondence address	DINESH PATEL BATCATEST CORPORATION 2118 WALSH AVE SUITE 240 SANTA CLARA, CA 95050 UNITED STATES Primary email: BatchTest_TM@batchtest.com Secondary email(s): btcroot@gmail.com 408-454-8378
Submission	Other Motions/Submissions
Filer's name	Patel, Dinesh
Filer's email	Batchtest_TM@batchtest.com, btcroot@gmail.com
Signature	/Patel, Dinesh/
Date	05/23/2022
Attachments	92070823 - Petitioners Request for clarification of Suspension Orders .pdf(783193 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ICware Systems, Inc. dba BatchTest Corporation and BatchTest Corporation)	Cancellation No.:	92070823
)		
Petitioner,)	Registration No.:	4499170
)		
v.)	Mark:	BATCHTEST
)		
Ikonix USA LLC)	International Class:	9
Registrant.)		

PETITIONER'S REQUEST FOR CLARIFICATION OF SUSPENSION ORDERS

BatchTest Corporation (“BatchTest”) and Dinesh Patel (“Mr. Patel”; BatchTest and Mr. Patel are collectively referred to as “Petitioner” in this document) hereby request the Board for clarification of the Board’s suspension orders dated December 13, 2022 and January 5, 2022 (53 and 58 TTABVUE). The Board suspended proceedings as of December 13, 2022 (the “Dec13-Suspension”; 53 TTABVUE), “pending disposition of Petitioner’s motion, filed December 3, 2021”. Since the Board’s decision on Petitioner’s Motion to Compel Discovery (“Petitioner’s Original Motion”; 51 TTABVUE) is still pending, Petitioner is under the impression that “[t]he parties should not file any paper that is not germane to [Petitioner’s] motion to compel.”

The Board’s January 5, 2022 order (the “Jan5-Order”) then warned that:

“By its December 13, 2021 order, the Board suspended these proceedings for consideration of Petitioner’s motion to compel. Respondent then filed four motions/stipulations for further suspension/enlargement of time. The piecemeal filings in this proceeding should **stop** as the parties are straining the Board’s patience and resources.” 58 TTABVUE 1.

The Jan5-Order also ordered “Proceedings are suspended until and including April 22, 2022”, which Petitioner understood as the Board granting Respondent’s motion for extension of time to facilitate settlement discussions without lifting the Dec13-Suspension, because the Board has not yet decided on Petitioner’s Original Motion.

However, Respondent Ikonix USA LLC (“Respondent”) is once again engaged in a significant

amount of seemingly improper motion filing; Respondent first filed its preemptive Motion to Substitute (59 TTABVUE) to gain advantage using document and information from Petitioner's clearly labelled confidential Fed Rule of Evidence 408 communication (Exhibit A), and then Respondent filed its Motion to Compel Discovery ("Respondent's Motion"; 62 TTABVUE) which is completely unrelated to Petitioner's Original Motion.¹ It is unclear to Petitioner from the Jan5-Order whether the Board will rule on Respondent's Motion at this time before deciding on Petitioner's Original Motion which was filed more than five months ago, and whether Petitioner should file a response to Respondent's Motion even though it is not germane to Petitioner's Original Motion.

WHEREFORE, Petitioner respectfully requests the Board's clarification to indicate if the current proceeding is still suspended, and if Respondent's Motion was properly filed. If the Board will consider Respondent's Motion at this time before deciding on the previously filed Petitioner's Original Motion, Petitioner respectfully requests the Board for sufficient time to respond to Respondent's Motion upon the Board's clarification.

Respectfully submitted,

Dated: May 23, 2022

/Dinesh Patel/

Dinesh Patel

President, BatchTest Corporation

2118 Walsh Ave, Suite 240

Santa Clara, CA 95050

¹ Respondent has not served any discovery request to Petitioner after serving Respondent's initial disclosures on November 2, 2020. Respondent's Motion is based on its attorney's below referenced incorrect assertions which were previously debunked by the Board's February 10, 2021 order (37 TTABVUE Footnote 3) as "Respondent's attorney's incorrectly asserts in an October 30, 2020 e-mail to Petitioner's president that its service of discovery requests on October 2, 2020 was proper, notwithstanding that Respondent had not served initial disclosures concurrently with or prior to service of those discovery requests, 34 TTABVUE 94. Although discovery opens prior to the due date for initial disclosures, a party may not seek discovery unless it has served initial disclosures. *See* Trademark Rule 2.120(a)(3); *Dating DNA, LLC v. Imagini Holdings, LLC*, 94 USPQ2d 1889, 1893 (TTAB 2010) (service of initial disclosures is a prerequisite to taking discovery); TBMP § 403.02."

EXHIBIT A

BatchTest Corp Trademark Admin

From: BatchTest Corp Trademark Admin <batchtest_TM@batchtest.com>
Sent: Tuesday, April 12, 2022 4:18 PM
To: 'Thomas J. Moore'
Cc: 'btcroot@gmail.com'
Subject: RE: BatchTest v. Ikonix; U.S. Cancellation No. 92070823; Our Ref: ICWA7001/TJM
Attachments: 20220407 USPTO Confirmation Receipt - BATCHTEST Assignment.pdf; Trademark Assignment - BATCHTEST.PDF; 2022-04-11 BatchTest redlined - BatchTest-Ikonix draft proposal.docx

Confidential – Fed. Rule Evidence 408 Communication

Hello Mr. Moore:

At the beginning of this month, BatchTest assigned its trademark applications and the BATCHTEST mark, along with the goodwill associated with them, to Dinesh Patel; the assignment was filed last week with the USPTO but it has not yet been recorded. Please find the attached copy of the said filing and the supporting document; accordingly I will be requesting the Board to join me in the proceeding.

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Lastly, since there is only about a week remaining in the time provided by the Board, if we can't reach an agreement then I propose that we discuss trial related issues on which we could agree on. I am open to discussing/stipulating on trial matters including both parties' marks, commercial impression, priority, goods, target consumers, etc. to see if we can reduce matters for trial. I recall that your client was not interested in pursuing ACR during our discovery conference, but if your client has changed mind about it then please let me know on that too. I welcome a discussion over a phone call too if that is more convenient, except for Thursday morning and early Friday morning (both California time) I have availability.

Please let me know on the above at your earliest opportunity.

Sincerely,

Dinesh Patel
2118 Walsh Ave, Suite 240
Santa Clara, CA 95050
Phone: 408-454-8378
Email: btcroot@gmail.com

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document "PETITIONER'S REQUEST FOR CLARIFICATION OF SUSPENSION ORDERS" was served upon the attorney for the other party by email on May 23, 2022 at the following email address(es):

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Phone: 703-683-0500

By:

Signature: /Dinesh Patel/

Name: Dinesh Patel

Date: May 23, 2022

Email: btcroot@gmail.com

CC: BatchTest_TM@BatchTest.com